

## IN THE DISTRICT COURT OF DAKOTA COUNTY, NEBRASKA

<p>CITY OF SOUTH SIOUX CITY, NEBRASKA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ANDERSEN FARMS, INC., ANDERSEN FAMILY FARMS, BRYCE L. ANDERSEN, and LUANNE ANDERSEN,</p> <p>Defendants.</p>	<p>CASE NO. CI 18-201</p> <p>FIRST AMENDED COMPLAINT</p>
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COMES NOW the Plaintiff, City of South Sioux City, Nebraska (the "City"), and for its Complaint against the Defendants, states and alleges as follows:

1. The City is a Nebraska municipal corporation located in Dakota County, Nebraska.
2. Defendant Andersen Farms, Inc. ("Andersen Farms") is a Nebraska corporation with its principal place of business located in Dakota County, Nebraska.
3. Defendant Andersen Family Farms is a general partnership with its principal place of business in Dakota County, Nebraska and the partners of Andersen Family Farms reside in Dakota County, Nebraska.
4. Defendant Bryce L. Andersen ("Bryce") is a resident of Dakota County, Nebraska and is an officer and member of the board of directors for Andersen Farms. Bryce is also a general partner of Andersen Family Farms.
5. Defendant Luanne Andersen ("Luanne") is a resident of Dakota County, Nebraska and is a general partner of Andersen Family Farms.

6. Andersen Farms is the record owner of the real estate commonly known as 2415 4<sup>th</sup> Avenue, South Sioux City, Nebraska (the “Real Estate”). The Real Estate is located within the limits of the City.

7. Venue is appropriate in Dakota County pursuant to Neb. Rev. Stat. § 25-403.01.

8. On or about May 29, 2018, an explosion ripped a gaping hole in the side of the grain elevator located on the Real Estate (“Grain Elevator Explosion”).

9. The City’s emergency personnel including law enforcement and firefighters responded immediately to the emergency situation.

10. The City deemed it necessary to provide certain emergency work and/or services including evacuations, 24/7 monitoring of the Real Estate, and closing streets adjacent to the Real Estate.

11. The City and Defendants’ structural engineer deemed the grain elevator beyond repair or rehabilitation and further that the grain elevator posed an immediate danger to the life, health, safety, and property of others.

12. The City provided emergency work and/or services related to the Grain Elevator Explosion from May 29, 2018 until the grain elevator was demolished on June 11, 2018.

13. At all times material hereto, the City had adopted by reference the 2012 International Property Maintenance Code (“Maintenance Code”). Code of Ordinances of South Sioux City, Nebraska (“Code of Ordinances”) §§ 18-651, -652.

14. The Maintenance Code applies to “all existing residential and nonresidential structures . . . .” Maintenance Code § 101.2.

15. The Emergency Measures section of the Maintenance Code, in part, provides:

[W]henever, in the opinion of the *code official*, there is *imminent danger* due to an unsafe condition, the *code official* shall order the necessary work to be done,

including the boarding up of openings, to render such structure temporarily safe whether or not the legal procedure herein described has been instituted; and shall cause such other action to be taken as the *code official* deems necessary to meet such an emergency.

*Id.* § 109.2 (emphasis in original).

16. In addition, “[c]osts incurred in the performance of emergency work shall be paid by the jurisdiction. The legal counsel of the jurisdiction shall institute appropriate action against the *owner* of the *premises* where the unsafe structure is or was located for the recovery of such costs.” *Id.* § 109.5 (emphasis in original).

17. “Owner” is defined as “[a]ny person, agent, *operator*, firm or corporation having a legal or equitable interest in the property . . . or otherwise having control of the property . . . .” *Id.* § 202 (emphasis in original).

18. “Operator” is defined as “[a]ny person who has charge, care or control of a structure . . . .” *Id.*

19. Andersen Farms is an owner of the Real Estate because it has a legal interest in it.

20. Bryce is also an owner of the Real Estate because he has an equitable interest in it and he is also an operator who has charge, care or control of the grain elevator located on the Real Estate.

21. Luanne is also an operator who has charge, care or control of the grain elevator located on the Real Estate.

22. Andersen Farms and Andersen Family Farms are also operators of the Real Estate because both entities have charge, care or control of the grain elevator on the Real Estate.

23. Bryce and Luanne, as general partners of Andersen Family Farms, are individually liable for the debts and obligations of Andersen Family Farms.

24. Attached hereto as Exhibit A, is an Invoice dated July 19, 2018 that was sent to Defendants for payment of emergency work and/or services provided by the City as a result of the Grain Elevator Explosion.

25. Defendants have failed and/or refused to pay the Invoice.

26. Pursuant to the Code of Ordinances and the Maintenance Code, the City brings this action to recoup the costs of providing necessary emergency work and/or services as a result of the Grain Elevator Explosion.

27. Defendants owe the City \$120,034.82 plus the statutory rate in prejudgment and/or post judgment interest.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, in the amount of \$120,034.82, plus pre- and post-judgment interest, costs, and for such other further relief as is necessary and proper.

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